IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION FOUR

NATIONAL LAWYERS GUILD, SAN FRANCISCO BAY AREA CHAPTER, Petitioner and Respondent, v. CITY OF HAYWARD, a municipal corporation; ADAM D. PEREZ, in his official capacity as Records Administrator, City of Hayward, California, Police Department; DIANE URBAN, in her official capacity as Chief of Police, City of Hayward, California; DOES 1-50, in their official capacity for the City of Hayward, Respondents and Appellants.	**No. A149328**

APPELLANTS' REPLY BRIEF

Alameda Superior Court Case No. RG15785743

Hon. Evelio Grillo

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
(Cal. Rules of Court, Rule 8.208)

There are no interested entities or persons to list in this certificate (Cal. Rules of Court, Rule 8.208(e)(3)).

Dated: July 16, 2017

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INTRODUCTION

There are clear differences between how the parties' view §6253.9(b). It is surprising, though, how many fundamental principles on which the parties agree. Little distance exists as to each parties' belief concerning the general purposes of the Public Records Act. This is particularly true in terms of philosophy, both parties wanting to improve transparency, and integrate systems that allow for greater disclosure, not less.

But where the parties' paths diverge, and subsequently where the NLG is led astray, is in various details that are significant in terms of how they affect the present matter. These differences are as follow:

1) The NLG's misunderstanding of the term "redaction" as it relates to the term "extraction";
2) The import of the legislative history in clarifying terms within §6253.9(b)(2);
3) The difference between the concept of "segregation" versus "extraction";
4) Whether §6253.9(b)(2) is about "data" or "records";
5) The meaning of "construct a record" as referenced in §6253.9(b);
6) Whether the time invoiced by Nathaniel Roush is appropriate;
7) And an omitted significant fact.

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ARGUMENT

I. The Difference Between "Redaction" and "Extraction" is that the Definition of "Redaction" Focuses on the Removal of Text, While the Definition of "Extraction" can be Applied to Multiple Electronic Mediums Such as Images, Sound, and Video

Over the course of the several briefs submitted to the trial court, just as in the briefing here before this Court, the parties have made quite clear that "extraction" means taking something out. What has not been discussed is "redaction."

"Redaction" is "the process of editing *text* for publication." 1 (*emphasis* added). Important in distinguishing these two terms is the idea that "redaction" is focused on editing *text*, while "extraction" is a word used to describe taking out something generally.

For electronic records, a more general concept rather than a text specific concept best captures the purposes of §6253.9(b)(2). This is because electronic records are not always text based. Electronic records can range from images, to sound, to video. For example, in a video, there is no text, thus the term "redaction," which focuses on the removal of text is unsuitable. A video requires a broader, more encompassing word since

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1 Google search, 'definition of redaction', Oxford Dictionary, https://en.oxforddictionaries.com/definition/redaction

"redaction" does not embody the item being removed. Hence, the legislature adopted a word that allowed for the removal of information spanning numerous electronic mediums, and thus, the inclusion of the word "extraction," as opposed to "redaction," was appropriate.

It is also important to note that "extraction" encompasses the process of "redaction," as "redaction" is just a form of "extraction," focusing on the removal of text specifically, as opposed to removing electronic information generally. The concepts are not mutually exclusive.

The confusion of this term by the NLG, believing "extraction" was integrated to mean something other than "redaction," is a misreading of the statute. In the Respondent's Brief, the NLG states that "instead of using the term redaction, the Legislature choose the term extraction, meaning something different." Respondent's Brief ("RB"), p. 32. We agree that the definition of "extraction" is not identical to the term "redaction." Multiple definitions of "redaction" focus on editing text. Across the board, in every reference book or dictionary, "extraction" means taking something out. But again, the terms are not mutually exclusive. The manipulation of an electronic record can be both "extraction" and "redaction" as was the case in *Fredericks*, whereby the agency removed electronic text.2 Or, as here, an electronic record which is not text based, like

2 *Fredericks v. Superior Court* (2015) 233 Cal.App.4th 209, at 220 (Requestor sought Calls for Service reports and Incident History Reports)("Fredericks").

video, will require "extraction" since it is not text that is being taken out but rather video and sound that is removed from the record.

Admittedly, the City has been a bit cavalier in using the term "redaction." Many people understand "redaction" as removing exempt material. But the term "extraction" is broader and more encompassing than "redaction." It is a term better suited for electronic records since it unequivocally encompasses the removal of more than just text. This is why the legislature chose the word "extraction" and not "redaction." This is why the term perfectly applies to the body-camera videos at issue here. Confusing these terms, and failing to recognize the subtle distinction between "redaction" and "extraction," is one of the critical errors made by the NLG.

II. The Legislative History Chronicles Events Leading to the Adoption of §6253.9(b) and Therefore the Legislator's Comments and Agency Reports are Entitled to Consideration By the Court

A glaring void exists in the NLG's arguments concerning the legislative history. No legislative record provided by the NLG supports its fundamental position that 'extraction' should be narrowed to only include taking non-exempt data out of an exempt record and, though construction, placing that non-exempt data into a new record. There is absolutely no support - not even a snippet.

Yet, the City has a wealth of support.3 And while the City would agree that if there was only one statement, or one agency report that supported its position, there could be reason to doubt the gravity of the legislative record. However, the legislative history, which were the records available to the legislature when lodging their respective votes, and information available to the governor when signing the bill, consistently and repeatedly reflect the statutory interpretation as presented herein by the City. The legislative record wholly supports the City's position that "extraction" means taking out information from an electronic record to prepare that record for production.

The author of AB2799 made clear that the requestor is to bear any ancillary costs of production when extra effort is required to produce a record. In response to this crucial legislative fact, the NLG suggested that this Court ignore the statements made by the statute's author. The NLG cites *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, claiming that "[t]he author's letter does not express the view of the Legislature" and that "[i]t does not necessarily include the views of the legislators who voted for the bill." RB, p. 40. But the NLG misses the more important point made in *California Teachers*. The Court continues, saying the following: "A legislator's statement is entitled to

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3 *See*, Appellants' Opening Brief, ps. 47-56; *See also*, Appellants' Request for Judicial Notice (Unopposed Request citing cases supporting consideration for the Legislative History presented by the City).

consideration, however, when it is a reiteration of legislative discussion and events leading to adoption of proposed amendments rather than merely an expression of personal opinion." *Id.*, at 700 "[Declaration of chairman of Cal. Const. Revision Com. considered insofar as it chronicled events leading to the proposed amendment]" *Id.* This is exactly what happened here, whereby the author of AB2799 does not provide personal sentiments, but rather specifically describes events giving rise to the integration of §6253.9(b) into the bill.

First, the legislative record says: "The author has been working with the opposition closely to address their concerns. Amendments may be introduced to address the issue of the cost and feasibility of redacting public information. If necessary, the amendments will be submitted to committee no later than June 19, 2000." Legislative History ("LH") 198. Later, the author confirms that "AB2799 was amended on June 22, to ensure the bill would not place new burdens on state or local agencies. Specifically, the bill was amended to require *the requester to bear the cost* of producing a copy of an electronically held record [as set forth in the text of §6253.9(b)]. & This provision guarantees the costs associated with any extra effort that might be required to make an electronic public record available shall be borne by the requester, not the state or local agency." Letter to Governor Gray Davis, LH 358. Extra effort, as can be deduced from the legislative history, includes redacting (or extracting) information from an electronic record.

Even though cited by the NLG, *California Teachers* aligns with the City's position that the author's statements are instructive in interpreting §6253.9(b)(2). These author comments above chronicle the author's appeasement of bill opponents, and to this purpose, present why the author integrated the §6253.9(b) cost-bearing provision into the statute. It chronicles the integration of the key provision at issue.

The NLG also requests that the Court ignore all letters by agencies describing AB2799. The NLG states that "[t]he agency letters and third party letters have no weight inasmuch as they are simply the views of specially interested parties." RB, p. 39. What the NLG misses, and what makes many of these agency letters particularly instructive, is that the letters presented by the City verify the sentiments of the bill author, not only in content but in regards to timeline, adding additional clarity to the legislative intent. In *Hassan*, a case cited by the NLG, the Court implies that such agency letters are not instructive *unless* supported by a statement from the legislature, such as the bill author here. *Hassan v. Mercy American River Hosp.* (2003) 31 Cal.4th 709, 723 ("We note that the legislative record . . . contains at least three letters. But the lack of support for this interpretation from any source within the Legislature itself confirms the Court of Appeal's conclusion . . ."); *See also, In re Raymond E.* (2002) 97 Cal.App.4th 613, 617, fn. 27 (taking judicial notice of various bill analyses, including Senate Judicial

Committee analysis). Here, the statements of the author, discussing concessions made to bill opponents, and the timeline by which opposition was withdrawn from the bill in relation to these author comments, clarifies the legislative record.

As way of example, look at the California Association of Clerks and Elected Officials ("CACEO"). "[W]e understand that it is the intent of the sponsor that such costs *not* include costs associated with any minor programming that may be required to comply with a request made pursuant to this section of the bill and costs associated with *redaction of any information* that is exempted or prohibited from disclosure by other sections of law." CACEO letter to Assembly Member Carle Migden, May 11, 2000, LH 533-534 (*emphasis* added). Following this statement by the CACEO and subsequent negotiations, the cost bearing provision in §6253.9(b) was integrated into the bill. *See*, LH 358. The CACEO thereafter withdrew its opposition. "This bill now addresses the costs incurred by public agencies in providing copies of electronic records under circumstances now described in the bill. We appreciate your willingness, and that of the bill's sponsor, to work with us to resolve the issues raised during the discussion of AB 2799." CACEO Letter to Assembly Member Kevin Shelley (Bill Author) Withdrawing Opposition, June 21, 2000, LH 302 & 391. To summarize more basically, the CACEO opposed the bill because it did not address redaction costs, then following the §6253.9(b) amendment by the author, the CACEO supported the bill because the amended bill

addressed its redaction cost concerns.

Once §6253.9(b) was integrated into the bill, with the understanding that the cost of 'redacting' electronic records and other associated costs would be borne by the requester, nearly all critics to the bill withdrew their opposition. *See*, Appellants' Opening Brief, p. 53; *See also,* LH 347; *See also*, LH 198, para.5. The author's statements and the agency statements are aligned, and support the City's statutory construction that "extraction" means taking out information from an electronic record, and that the associated costs in preparing a record for production are to be borne by the requestor.

The most important thing to understand about the legislative history is this- these statements made by the bill author and by agencies are factual accounts of how AB2799 was swayed and fashioned. There are no logical leaps, no strained or hidden interpretations, the record just is what it is, a reflection of why the Legislature integrated the cost bearing provision into the bill.

Everything within the legislative record supports the City's interpretation of the statute. The Legislature added §6253.9(b) to allow agencies to invoice costs associated with taking out exempt information from an electronic record.

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III. The Difference between "Segregation" and "Extraction" is that the Term "Extraction" is a Word Better Suited to Describe the Process of Editing Electronic Records

The Legislature is allowed to use different words when drafting different sections in a statute. The NLG argues that because the legislature uses the word "segregation" in §6253(a), that the concept of 'segregation' is excluded from playing any role whatsoever in the processes of "data compilation, extraction, or programming" as set forth in §6253.9(b)(2). RB, p.31. There is nothing to support this contention.

As stated above, the word "extraction" was meant to be understood broadly, encompassing the removal of information from multiple electronic mediums. "Segregation" involves an act of separating or setting things apart.4 When removing sound from a video, you are not necessarily separating the sound out, you are taking the sound out. The sound is not set apart, it is simply deleted. When editing sonic records, "extraction" is the best term, not "segregation" or "redaction." This is why the broader term "extraction" was used by the legislature.

Not only is there a semantic flaw in the NLG's argument concerning 'segregation,' but a logical one as well. The NLG says that "when the Legislature has carefully employed a term

4 Definition of "Segregate," Merriam-Webster, ("to separate or set apart from others or from the general mass"), https://www.merriam-webster.com/dictionary/segregate

in one place and has excluded it in another, it should not be implied where excluded." RB p. 31. What the Court is saying is to not *imply* omitted words, but what it does not say is to *exclude* omitted words. This is a significant distinction. The Court is not saying that the terms "segregation" and "extraction" need be mutually exclusive.

The case cited by the NLG to support its position is *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711 (a case in which the Court considered whether the concept of "public interest" was integrated into an earlier subdivision of Section 47 of the CA Civil Code. The words "public benefit" were in subdivision 5, but no reference to the "public" were made in subdivision 3). In *Brown*, the subdivisions compared were in the same exact Section. In contrast, here we have two distinct statutory Sections referencing two distinct concepts- Section 6253 ('segregation') and Section 6253.9 ('extraction'), one Section referring to inspection of public records generally, and the other referring specifically to the production of electronic records. The facts in *Brown* do not provide an applicable comparison to the statutory issue here.

"Extraction" means taking something out, "segregation" means to separate apart. Though these terms are different they are not necessarily exclusive of one another. But as seen in the process of editing sound out of a video, "extraction" more aptly applies, as it does generally to electronic records, which is the reason the term was chosen.

IV. Though Either Parties' Definition of the Term "Extraction" Align With the Video Editing Performed by the City, the Provisions in §6253.9(b) Concern Records Production, Not Data Production

An argument is put forth by the NLG where it claims that "Section §6253.9(b) addresses electronic *data*," which the NLG claims "is plainly different from an electronic *record*." RB, p. 25. The City has addressed this argument. *See*, Appellant's Opening Brief, ps. 36-38. To say that "data" and "records" are "plainly different" is not accurate. The Public Records Act is aptly named- it concerns records. The City cannot produce 'data' in response to a Public Records Act request, it can only produce records. When the City manipulates the data within a digital file, it manipulates the digital file record. "Data" and "records" are one in the same when considered in the context of the physical processes in editing a public record.

The NLG premises its argument on the belief that the word "data" should attach itself to not only "data compilation," but "data" should continue through the §6253.9(b)(2) subdivision and further attach itself to "extraction" and "programming." Based on the NLG's statutory interpretation, the NLG believes that the statute should be understood as 'data compilation,' 'data extraction,' and 'data programming.' There is nothing to support this strained interpretation. The comma exists to separate two distinct concepts, not to make "data

compilation" and "extraction" virtually identical processes. If the legislature wanted "data" to attach to all three concepts, it would have done as it did in §6253(c)(4) ("The need to compile data . . . or to construct a computer report to extract data.").

But even if we accept the NLG's concept of 'data extraction,' the City's editing of the body-camera videos here would fall into the NLG's definition. *See*, Declaration of Dr. Su ("Microsoft Movie Maker uses the following basic steps to edit digital videos – importing a video/audio file, decompressing and rendering the video/audio, modifying or extracting video/audio, and re-compressing and exporting the video/audio into a new file."), Joint Appendix ("JA") 268. The literal digital functions taking place within Movie Maker is extraction of data and recompression of that data into a new file. Though the NLG improperly construes the statute, the NLG's interpretation of the term "extraction" still allows for the City to invoice its costs to the NLG.

Still, that said, nothing indicates that "data" should attach itself to "extraction," nor fasten itself to "programming" thereafter. "Data" is attached to the concept of 'compilation' and nothing more. Such an interpretation by the NLG contradicts a plain reading of §6253.9(b).

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V. "Construct a Record" as Used in §6253.9(b) Suggests that an Agency Might be Required to Construct a Record on Occasion, Not that an Agency Need Always be Required to Construct a Record to Recoup Production Costs

The NLG believes a digital video file to be similar to a stack of papers. *See*, RB p. 25. But in reality, a digital video file is more akin to the desk on which a stack of papers rests.

Extraction from a video is taking something out of the video. Take the desk. Say I asked you to take a desk and scale it down by 25%. You take apart the desk (decompression) and whittle down the various parts of the desk such as the legs and top, drawers and handles, all down 25% (extraction). Thereafter, you fuse all the components back together (recompression), and now have a desk 75% the size of the original desk. This is the process of extraction. It requires taking something out of a single object. The NLG argues that this extracted desk is indistinct from the original desk. *See*, RB p. 25. By no means is this true.

This new reduced desk did not previously exist, just as a toothpick did not exist when its wood existed in a Birch tree. The extracted product is distinct. Even though the desk looks similar and serves a similar function, in the end, you will need to pay the carpenter for her work. That is because of the material she had to take out, and her effort, as understood in the definition of extraction. The carpenter's 40 hours of work,

just as the City's 40 hours of work to produce the edited videos, are not trivial. The legislature recognized this when formulating §6253.9(b).

Yet, the NLG argues that an "agency cannot charge when the extraction removes information and therefore does not construct or produce a record, that is, when the original record is maintained." In the legislative history for AB2799, the Franchise Tax Board stated that §6253.9(b) might be misconstrued in a similar way. "[T]he terms "compile data" and "construct a record" are unclear. These terms could be interpreted to require a state agency actually to create a new public record to satisfy a request. In order to implement this bill, the department will interpret that it will not be necessary to create a new public record." Enrolled Bill Report, Franchise Tax Board, LH 1053. The NLG has similarly confused the term "construct." But instead of believing that agencies *may* be required to construct new records, the NLG has gone a step further to misconstrue the concept of 'construction' to *require* 'construction' as an essential component needed for an agency to recoup its costs.

For the NLG, the error exists in its dismissal of the word "and." Section 6253.9(b)(2) reads as follows: "[T]he requester shall bear the cost of producing a copy of the record, including the cost to construct a record, *and* the cost of programming and computer services necessary to produce a copy of the record when . . . [t]he request would require data compilation,

extraction, or programming to produce the record." (emphasis added). The statute is easier to digest when breaking the two primary components of the provision down.

Part 1: "The requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record"

Basically, what is being stated above is that if an electronic record is produced for circumstances later described in §6253.9(b), the requestor bears the costs. The statute continues to assist the reader in recognizing that 'construction,' and "programming and computer services" may be necessary to produce a record. These costs, if such efforts are required for production, may be invoiced by the agency. This implies that some records, though not necessarily all, may have a component of "construction." The key word is "and." It is agreed by both parties that not all "data compilation" and "extraction" require "programming and computer services."[5] Yet, for some reason the NLG does not require that a request involve "programming and computer services" to be invoiced. It only asserts the need to "construct a record." The "and" existing after "construct a record," means that there are other equally relevant tasks sometimes associated with "producing a copy of

5 "Programming" is "the process of developing and implementing various sets of instructions to enable a computer to do a certain task." Definition of 'Computer Programming,' www.businessdictionary.com/definition/computer-programming.html

the record" that are to be considered when invoicing the ancillary costs of production. This is conveniently ignored by the NLG.

Though "construct a record" as used in §6253.9(b) clearly means creating a new electronic record, the best example of what the legislature contemplated when saying "construct a record" is set forth in the Senate Judiciary Committee's Bill Analysis, a legislative record offered by both the City and the NLG:

> "Where the records do not lend themselves to electronic format, this bill would not impose a duty on the public agency to convert the records into electronic format . . . For example, environmental impact reports, which are voluminous, normally contain maps and other fold-out attachments. Until these documents are actually produced by the public agency or their contractors in electronic format, there would be no obligation for the agency to provide the reports in disk or CD form." JA 199 & 230-231.

As can be gleaned from the bill analysis, "construct" can mean turning a non-electronic record into an electronic record. Turning a paper fold-out map into an electronic record would be one way to "construct a record."

"Data compilation" also has an element of construction, as explained below.

Part 2: "The request would require data compilation, extraction, or programming to produce a record."

The provisions in §6253.9(b)(2) mirror the concepts in §6253.9(b). "Data compilation" as stated in §6253.9(b)(2) requires 'construction' or 'computer services' as referenced in §6253.9(b). "Extraction" requires the use of a computer program which can be considered a 'computer service.' "Programming" also requires 'computer services.' Thus, in a way, the terms in §6253.9(b)(2) are a reiteration of broader counterparts in §6253.9(b).

As for understanding §6253.9(b)(2) and "extraction" specifically, the meaning is quite simple- if an agency must take out something from an electronic record in order to prepare that record for production, the requestor bears the cost to produce the record, including the ancillary tasks associated with production. This is the most straightforward, plain reading of the key provision encompassed within §6253.9(b). The statute means what it says.

Even if we were to accept the NLG's concepts of "construct" or "produce," and if "construct" and "produce" are assumed to mean something different, it is difficult to discern how the NLG can claim that the extraction of exempt material here is not 'producing' a record. The City took out exempt material out of the videos "to offer to view" and "to make available for public exhibition," per the definition of

"produce."6

The subdivision of §6253.9(b)(2), when considered in relation to §6253.9(b), as well as other provisions in the Public Records Act, suggest that "extraction" simply means taking something out from a record. Taking exempt material out of a digital video file in order to allow a record to be produced is a form of extraction. Such efforts may be invoiced to a requestor as authorized by §6253.9(b)(2).

VI. Nathaniel Roush's Time is Properly Invoiced Under the Plain Meaning of "Data Compilation"

Respondent's question whether Nathaniel Roush's time was properly invoiced. RB, p. 41. Based on the NLG's definition of 'extraction,' the work done by Mr. Roush fits precisely into the NLG's definition of 'extraction.'7 The NLG says that "extraction" is when extracted information (or "holes") are "used to construct a record or produce a record." RB, p. 25. Mr. Roush took data/information from a single source and used that data/information to construct a new record. 8 While this fits exactly into the NLG's definition of 'extraction,' it more aptly applies to the *Fredericks* Court's usage of 'compilation.'

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6 "Produce" is a broad and general term. The definition of "produce" is 1) "to offer to view or notice," 2) "to make available for public exhibition or dissemination," 3) "to cause to have existence or to happen," and 4) "to compose, create, or bring out by intellectual or physical effort." Definition of "Produce," www.merriam-webster.com/dictionary/produce

7 "Extraction" is defined by the NLG as "taking something out" and "to pull or draw out, usually with special effort." RB p.22; JA 173.

8 The NLG has appropriately defined "data" as akin to "information." JA 24.13; 455.

Fredericks, at 236.

In *Fredericks*, Petitioner submitted a request for "complaints and/or requests for assistance" made to the San Diego Police Department over the sixty-day period prior to the request. *Id.*, at 215. Incident History Reports were found to be responsive. *Id.* Compiling those Incident History Reports, and then performing redactions on those compiled records, allowed the agency to invoice costs by which the court could "condition disclosure upon," since "generation, compilation, and redaction" were required. *Id.*, at 238.

Here, the requested videos were not held in a single folder or simply retrieved from a file cabinet. The records here required 4.9 hours of compilation. JA 54. They required searches over 45 distinct parameters. JA 50. Thus, *Fredericks* allows the City to charge the NLG for the compilation of videos performed by Mr. Roush. This issue is clear-cut based on either parties' definitions. At best, this is an issue for remand.9 But more appropriately, the Court should allow the City to invoice production costs pertaining to Mr. Roush.

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9 Balancing under Govt. Code §6255 would also be appropriate if remanded.

VII. Response to the NLG's Statement of the Facts- The NLG's missing significant fact is that Adam Perez was Incredibly Efficient in Performing the Required Video Edits

The NLG argues that the City charged for Adam Perez "learning" on the job. RB, p. 13. This is not entirely accurate. Mr. Perez had utilized similar video editing platforms to Windows Movie Maker prior to editing the videos. JA 610-611. Still, even taking into account that Mr. Perez was using Windows Movie Maker for the first time, the NLG leaves out of its facts that Mr. Perez's review was much, much faster than other video editors and agencies. To assist, some context is helpful.

The City reviewed the responsive videos subject to this litigation multiple times. In this review process the City first checked to see whether exemptions were present in the videos. JA 93, at 13:8-12, JA 107 at 27:23-28:10, JA 136 at 56:4-15; JA 245, at para. 23. None of these initial reviews checking for exemptions were charged to the requester. JA 245, at para. 25.

Mr. Perez then reviewed the narrowed set of responsive videos to check if exemptions were present. JA 583, at 9:7-13. Mr. Perez sought legal counsel whereby the City Attorney's Office reviewed the narrowed set of videos and confirmed that exemptions were present. JA 93, at 13: 8-12, JA 107-108, at 27:23-28:10, JA 136, at 56:4-15. These two initial reviews of the narrowed set of videos were not charged to the NLG. JA 126, at

46:8-20.

After identifying exempt material, Mr. Perez attempted to extract those portions of exempt video utilizing the available VLC player. The attempted VLC player extraction process following the initial reviews was abandoned and not charged to the NLG. JA 101-102, at 21:19-22:15; JA 104, at 24:7-11; JA 246, p. 7, para. 27-29; JA 581 & 591, at 7:7-8:7, 17:2-8.

The only charge imposed by the City was for the extraction process using Windows Movie Maker. JA 111, at 31:3-6, JA 126, at 46:14-20; JA 249, p. 10, para. 10. Within Windows Movie Maker, Mr. Perez performed extractions in a three phase process. JA 114-115, at 34:17-35:12, JA 125, 45:7-9, JA 129, at 49:23-50:7; JA 248-249, p. 9-10, para. 34-40. The first two phases of the extraction process included noting precise temporal markers in the videos. JA 245, p. 6, paras. 23-25; *Id.*, p. 9, para. 37; JA 97, at 17:14-17, JA 101-102, at 21:19-22:3, JA 115, at 35:10-24, JA 130, at 50:3-5; JA 604, at 30:4-20. In the third phase, Mr. Perez edited video so that a new record could be generated based on the manipulation of the decompressed data from the original file.

This three phase extraction process was expedient, only taking 35.3 hours to review the 4 hours of provided videos. This is approximately a 9 to 1 editing to video ratio- nine minutes of editing for each one minute of video. JA 561, 2:7-12. This ratio is substantially less than the 30 to 1 ratio noted by the Seattle Police Department. JA 323. This ratio is much less than the 27

to 1 ratio offered by a private video editing service. JA 427.

Thus, the three phase extraction process in Windows Movie Maker was determined to be much more efficient than processes utilized by Seattle or by private video editors. JA 590, at 16:7-10. Simply put, though Mr. Perez may have, to a degree, learned on the job, he was still much faster than his video editor counterparts.

CONCLUSION

The reason for the City in even having body-camera video was because the City felt it could improve transparency and subsequently itself. Having officers wear body-cameras is, in part, because of an agency's search for its own self-improvement. And the value of these videos is in the content, what they show us, how they move us to change, better ourselves as a society, not in the discounted price videos are provided to requestors.

Yet with transparency comes issues of privacy. We are here because the City removed exempt material from body-camera videos. Removing private information from possibly horrific situations, the absolute worst that can be imagined, is a necessary safeguard for all of us. Deeply personal private moments should not be broadcast to the world simply because the government captured that moment on video. Appropriately, the Legislature provided the necessary exemptions allowing for

the removal of certain categories of information. Allowing cities to recoup costs for extracting exempt private information enhances the thoroughness in this review of sensitive, private videos, to ensure that exempt information is not released.

Our value in transparency is only endurable if we protect our value in privacy. The concepts are intertwined. Extracting exempt information from a record, as authorized by §6253.9(b)(2), is a fortification of this foundational privacy interest protecting individuals as well as a furtherance of transparency by allowing disclosure. A ruling for the City in this matter allows these two foundational interests to maintain an indispensable balance.

Accordingly, and for the foregoing reasons, the City respectfully requests that the Court reverse the trial court decision, and find for the Appellants.

Dated: July 16, 2017

Justin Nishioka
Assistant City Attorney
Attorneys for Defendants and Appellants

CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.204(c))

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Dated: July 16, 2017

Justin Nishioka
Assistant City Attorney
City of Hayward

STATE OF CALIFORNIA
Court of Appeal, First Appellate District

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